

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JABBAR COLLINS,

Petitioner,

-against-

ROBERT ERCOLE,

Respondent.

DORA L. IRIZARRY, U.S. District Judge:

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ JUN 09 2010 ★

BROOKLYN OFFICE

FINAL JUDGMENT ORDER

08-CV-1359 (DLI) (CLP)

Upon all of the documents and proceedings before this court, and pursuant to the agreement and consent of the parties, it is hereby ORDERED, ADJUDGED and DECREED that the application of the petitioner, Jabbar Collins, for a writ of habeas corpus is GRANTED in all respects as set forth in greater detail below.

The parties have stipulated and agreed to the following:

1. That, if the hearing on the amended petition were continued to its conclusion, the following facts, among others, would be established by a preponderance of the evidence:

- a. Detective Gerecitano made a statement to the King's County District Attorney's Office in May 2010, revealed thereafter to petitioner, that, prior to petitioner's trial, there was a recantation by witness Edwin Oliva of his statements implicating the petitioner in the crimes charged in underlying indictment; and
- b. The defense was not made aware of the recantation described by Detective Gerecitano, either prior to or during the criminal trial of the petitioner;

2. That the State's failure to disclose the recantation described by Detective Gerecitano to the defense constitutes a violation of petitioner's federal constitutional right to due process and a fair trial under *Brady v. Maryland*, 373 U.S. 83 (1963), as such non-disclosure was material to the outcome of the trial, and thus necessitates vacating petitioner's conviction and sentence; and
3. That respondent, having reviewed the evidence as it now stands, has concluded that there is insufficient evidence with which to meet the State's burden of proving petitioner's guilt beyond a reasonable doubt at any re-trial.

WHEREFORE, based on the foregoing, it is hereby ORDERED, ADJUDGED and DECREED, that the amended petition is GRANTED.

Accordingly, it is further hereby ORDERED that (1) petitioner's conviction and sentence are vacated and the underlying indictment (No. 2884/1994) is dismissed WITH PREJUDICE; (2) respondent is FOREVER prohibited from re-trying petitioner; and (3) petitioner is UNCONDITIONALLY RELEASED and, as agreed to by the parties, the New York State Department of Corrections is hereby directed to transport petitioner to Green Haven Correctional Facility forthwith, to be promptly released from said facility.

SO ORDERED.

DATED: Brooklyn, New York
June 8, 2010

S/DLI

DORA L. IRIZARRY
United States District Judge

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 - - - - - X
4 COLLINS, :
5 Plaintiff, 08-CV-1359
6 -against- : United States Courthouse
7 Brooklyn, New York
8 ERCOLE,
9 Defendant. :
10 - - - - - X June 8, 2010
11 10:30 o'clock a.m.

12 TRANSCRIPT OF CIVIL CAUSE FOR HEARING
13 BEFORE THE HONORABLE DORA L. IRIZARRY
14 UNITED STATES DISTRICT JUDGE

15 APPEARANCES:

16 For the Petitioner: JOEL RUDIN, ESQ.
17 TERRI ROSENBLATT, ESQ.
18 BEN FISHMAN, ESQ.
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21 New York, New York 10019

22 For the Respondent: KINGS COUNTY DISTRICT
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BY; KEVIN SCOTT RICHARDSON
LEONARD JOBLOVE
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Assistant District Attorneys

26 Court Reporter:
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1 Proceedings recorded by mechanical stenography,
2 transcript produced by computer.

3 THE COURT: Come to order. You may be seated.

4 THE CLERK: Docket No. 08-CV-1359.

5 State your appearances, please.

6 MR. RUDIN: For petitioner, Joel Rudin, and with me
7 id Terri Rosenblatt and Ben Fishman. Good morning.

8 THE COURT: Good morning to you all.

9 Good morning, Mr. Collins.

10 THE DEFENDANT: Good morning, Judge Irizarry.

11 THE COURT: For respondent.

12 MR. RICHARDSON: From the Office of the Kings County
13 District Attorney respondent attorneys, Kevin Scott
14 Richardson, Leonard Joblove, and Victor Barell.

15 Good morning, Your Honor.

16 THE COURT: Good morning. Good morning to you all.
17 Good morning to all of the people in the audience.

18 All right. We are here today originally to continue
19 the hearing on the petition for writ of habeas corpus that was
20 filed by Mr. Collins. The last time you were here we did, in
21 fact, take testimony of Mr. Angel Santos and then it was
22 continued until this week. Late yesterday afternoon through a
23 conference call with both parties represented, but Mr. Collins
24 was not present for that conference call, the parties had
25 advised the Court that they had reached an agreement towards a

1 resolution of petitioner's application and my understanding is
2 that that resolution encompasses an unconditional release with
3 commitment from respondent that petitioner will not be retried
4 on this matter. That is my understanding.

5 Mr. Rudin, is that correct?

6 MR. RUDIN: Yes, Your Honor.

7 Did you receive the letter that we filed through
8 ECF?

9 THE COURT: I did receive the letter that was filed
10 with some proposed language. I did have some questions about
11 that but perhaps, it would be best if, Mr. Rudin, you put on
12 the record what your understanding of the agreement is, and
13 I'll give respondent an opportunity as well to address the
14 Court.

15 MR. RUDIN: Yes, Your Honor. My understanding of the
16 agreement is that -- well, it's really set forth in the
17 letter. The District Attorney has acknowledged based upon the
18 statement that it received from Detective Gerecitano about
19 recantation by Edwin Oliva that my client's constitutional
20 rights were violated and that evidence was not turned over at
21 the trial and was not known to Mr. Collins or his attorney at
22 the time of the trial and wasn't discovered until well after
23 the trial; and that based upon that acknowledgment by the
24 respondent, the respondent has acknowledged that that was a
25 Brady violation, that that violation was material to the

1 outcome of the trial, and that based upon that violation that
2 petitioner's conviction must be vacated; and that the
3 respondent has further agreed that there is based upon the
4 evidence that all the evidence that's now known to the state,
5 including the recantation, that there is now insufficient
6 evidence with which to meet the state's burden of proof beyond
7 a reasonable doubt at any retrial, and that for that reason
8 the respondent is agreeing to the relief that -- all the
9 relief that we requested in the petition, which is that
10 petitioner's conviction be vacated, that any retrial of
11 petitioner be prohibited and that the underlying indictment
12 No. 2884 of 1994 be ordered dismissed with prejudice. And I
13 understand Your Honor has some questions about the language in
14 the letter, but we would request that in substance that the
15 elements that are set forth in the letter be included in Your
16 Honor's order.

17 THE COURT: Well, one of the issues that I have is
18 with respect to item number four that says: Upon respondent's
19 agreement, that there is now insufficient evidence with which
20 to meet the state's burden of proof beyond a reasonable doubt
21 at any retrial. Doesn't really encompass in quite the same
22 way what you had just set forth on the record. I mean this
23 recantation of this witness was known before we started the
24 hearing and the original proposition that was made by or
25 proposal, I should say, that was made by the respondent was to

1 concede error and consent to a granting of the petition but
2 with a retrial. When we had the original oral arguments on
3 this case respondent was adamant that they were going to retry
4 the case, and that they had sufficient evidence to retry the
5 case, and so, in essence, what has been agreed to here is
6 nothing more than where we were to begin with, except that
7 it's not clear that respondent is saying that just based on
8 that recantation there's insufficient evidence or whether it's
9 based on all of the other information that has surfaced during
10 the course of the litigation of this petition and perhaps,
11 maybe I can let Mr. Richardson address that or anyone from
12 respondent's team there.

13 MR. RICHARDSON: Yes, Your Honor, if I may be heard.
14 I had a statement that I am prepared to deliver to this Court
15 on behalf of my office that I think will both explain and
16 address the concerns just raised by Your Honor. I have
17 discussed the subject and content to a degree with Mr. Rudin
18 and I would like to state before I begin the statement that
19 the letter that was sent to the Court is language that both
20 Mr. Rudin and I worked on until late into the evening
21 yesterday and agreed upon before he sent the communication to
22 you. So it is not just Mr. Rudin's language; it is our
23 language as well.

24 THE COURT: I understood that to be the case. That
25 is clear from the letter.

1 MR. RUDIN: Then if I may begin?

2 THE COURT: Yes, sir.

3 MR. RICHARDSON: Your Honor, on February 6, 1994,
4 Rabbi Abraham Pollak was robbed of rent monies he was
5 collecting at a building that he owned at 126 Grand Avenue
6 here in Kings County. During the robbery Rabbi Pollak was shot
7 multiple times and Paul Avery, handyman in the building who
8 came to Rabbi Pollak's aid, was shot in the leg and the chest.
9 Mr. Avery was fortunate enough to have survived his injuries
10 that day. Rabbi Pollak shot no less than six times in the
11 chest, leg and back did not survive.

12 The police investigation began immediately and on
13 the very next day, February 7, 1994, the same day Rabbi Pollak
14 was laid to rest, leaving wife and nine children to mourn his
15 untimely passing, the police received information that the
16 defendant, the petitioner, Jabbar Collins, was involved in the
17 shooting. The police in conjunction with the District
18 Attorney's Office conducted an investigation that lasted over
19 30 days. They interviewed numerous witnesses and located two
20 witnesses -- Angel Santos and Adrienne Diaz -- who identified
21 the defendant as being at or near the scene of the robbery
22 homicide. A third witness, Edwin Oliva, was also located and
23 he both identified Jabbar Collins to police and told them that
24 he had heard Collins plan the robbery, that he knew him to
25 carry the type of weapon that was used in the killing and that

1 he had information that Collins had disposed of his weapons
2 after the homicide.

3 Based on those witnesses the police department
4 placed Jabbar Collins under arrest for the robbery and murder
5 of Rabbi Pollak, and the attempted murder of Paul Avery. The
6 Kings County District Attorney's Office authorized and
7 approved of the arrest of the defendant then and we stand by
8 that decision as correctly made in light of the information
9 and evidence that existed at that time which provided ample
10 probable cause to charge the defendant with these crimes. The
11 defendant was represented at his arraignment and for all of
12 the remainder of the prosecution by attorney Michael Harrison.
13 The defendant was indicted by a Kings County grand jury after
14 they were presented with evidence of the defendant's guilt,
15 including the testimony of Adrienne Diaz and Angel Santos, and
16 the case proceeded to trial in March of 1995.

17 That trial was held before Justice Frank Egitto, now
18 retired, of the Supreme Court of Kings County, and was
19 prosecuted by former ADA, the late Honorable Charles Posnor,
20 former ADA Stacey Frascogna and ADA Michael F. Vecchione,
21 currently the Chief of the Rackets Division of Kings County
22 District Attorney's Office.

23 The trial lasted less than two weeks, after which
24 the defendant was convicted of each and every count that was
25 submitted to the jury. In the years following the trial

1 numerous allegations have been leveled against the police, the
2 District Attorney's Office, and the individual prosecutors who
3 conducted the trial, and even attorney Michael Harrison, the
4 defense attorney, who represented the defendant at trial was
5 accused.

6 This Office stands behind the conduct of former
7 Assistant District Attorney Posnor and Fisconia and current
8 Assistant District Attorney Vecchione, who prosecuted the
9 defendant at his trial, along with the Office's staff and
10 detective investigators who assisted them, and we deny each
11 and every one of the allegations leveled against them, and
12 against the trial court that conducted the trial, and the
13 police officers who investigated the homicide, and who
14 testified against the defendant.

15 Following a series of foiled requests made by the
16 defendant to the Kings County District Attorney's Office in
17 2006, the defendant filed a motion in the state court pursuant
18 to CPL Section 440, wherein the defendant again raised
19 numerous claims against the Kings County District Attorney's
20 Office, the individual prosecutors who prosecuted him at the
21 state trial and the Kings County judiciary -- excuse me -- and
22 the Kings County Judiciary. The Appeals Bureau, more
23 specifically ADA Monique Ferrell, was assigned to investigate
24 and respond to these allegations. This office, again, stands
25 by the conduct of the trial team who conducted the initial

1 trial and stands by the post conviction investigation into the
2 claims raised by the defendant headed by ADA Ferrell. We deny
3 any claim that our responses filed to the defendant's motions
4 were anything less than truthful. Our answers to his claims,
5 which resulted in the denial of the defendant's 440 motion,
6 were the product of a thorough investigation of each one of
7 the defendant's allegations, and were based upon information
8 and belief as it existed at the time the answers were
9 submitted.

10 Then, in 2008 the defendant filed petition in
11 federal court for a writ of habeas corpus, and this court
12 granted a hearing. It was in April of 2010 during the course
13 of preparation for this hearing that the defendant first
14 raised the name Detective Vincent Gericitano. And when
15 Detective Vincent Gericitano arrived at my office to receive a
16 subpoena in May 2010 he revealed to me and ADA Ferrell
17 something that no living member of the Kings County District
18 Attorney's Office, including former ADA Fisconia and ADA
19 Vecchione knew. Detective Gericitano revealed something that
20 was unknown to all present or former staff members who were in
21 any way involved in the prosecution of Jabbar Collins. He
22 revealed a piece of information that was also unknown to any
23 member of New York City Police Department who was assigned to
24 Rabbi Pollak's murder and is contained in no records that are
25 maintained by the police department or by the Kings County

1 District Attorney.

2 Detective Gerecitano revealed to ADA Ferrell and to
3 myself in May of 2010 that back in 1995, prior to the
4 defendant's testimony, that Edwin Oliva had recanted his
5 statement against Jabbar Collins. When we learned of this
6 alleged recantation we immediately informed the defense via
7 telephone, followed up in writing to this Court. We also,
8 following a review of the transcript and record of
9 Jabbar Collins' trial, found no record of this alleged
10 recantation having been revealed to the defense prior to or
11 during the trial.

12 At that point we informed both the Court, and the
13 defense that we, the Kings County District Attorney's Office,
14 in the interest of justice and in giving every defendant a
15 fair trial, were conceding to the defendant's request to
16 vacate his conviction because it was the opinion of my office
17 that, assuming the recantation information from
18 Detective Gerecitano was true, that the defendant had not been
19 made aware of it, and that his conviction would not have been
20 fairly and lawfully obtained. We sought to -- excuse me, Your
21 Honor. We sought leave from this Court to be allowed to retry
22 the defendant, which then became the subject of an amendment
23 to the habeas petition and the reason why we are here today.

24 When Detective Gerecitano's information was
25 revealed, the Kings County District Attorney's Office began a

1 reevaluation of the evidence against the defendant in
2 preparation for a new trial, evaluation that would include
3 members of the Office of the Homicide Bureau and several of
4 the heads of the Appeals Bureau. We began evaluating the
5 strength of the case against the defendant with the evidence
6 as it now exists, more than 16 years from the date of the
7 murder and some 15 years after it was presented at the
8 defendant's previous trial.

9 It is the opinion of the Office based upon the
10 weaknesses that now exist with the witnesses and the
11 unavailability of portions of the physical evidence that to
12 retry the defendant is no longer a viable option, and that we
13 can no longer secure against him a conviction by proof of his
14 guilt beyond a reasonable doubt.

15 Therefore, solely based upon the reasons stated, the
16 People have previously asked this Court to vacate the
17 defendant's conviction under New York State Indictment No.
18 2884 of 1994.

19 We announce today to this Court, as we have
20 previously informed the defendant through his counsel, that
21 based upon the status of the evidence against Mr. Collins as
22 it now exists, 16 plus years after the commission of the
23 crime, with the loss of Edwin Oliva, the key witness against
24 Collins to prove that he planned the robbery, possessed a
25 firearm of the type used in the homicide, coupled with the

1 reevaluation of Angel Santos, the key witness to his
2 observation of the defendant, though 16 years ago, while
3 perhaps under the influence of drugs then, and most certainly
4 presently suffering the long term effects of drug abuse, and
5 finally, with the destruction of key pieces of physical
6 evidence from the crime scene, we can no longer prove our case
7 against the defendant beyond a reasonable doubt at retrial.

8 We are, therefore, unable to oppose this Court
9 granting a relief sought by this petitioner, and therefore,
10 for those reasons, withdraw our opposition to this Court's
11 granting of unconditional writ of habeas corpus for the
12 defendant petitioner as to Kings County Indictment No. 2884 of
13 1994, and we withdraw our opposition to that court's
14 concluding language in that order that the Kings County
15 District Attorney's Office is forever barred from retrying the
16 defendant on these crimes.

17 Thank you, Your Honor.

18 MR. RUDIN: May I respond?

19 THE COURT: Yes.

20 MR. RUDIN: Your Honor, first of all I just want to
21 make clear that my understanding of the law is that petitioner
22 in habeas corpus petition is only entitled to the relief
23 requested in the petition here as amended. The relief that we
24 requested was the relief that the respondent is now consenting
25 to and that is the reason that we worked out the language that

1 that a jury should have been able to make that decision based
2 upon all relevant evidence. Unfortunately, the District
3 Attorney's Office did not trust Mr. Collins' jury to make the
4 right decision. Today the District Attorney acknowledges that
5 based on the very evidence that the Office concealed that it
6 cannot meet its burden of proof. The tragedy is that it did
7 not reach that conclusion or allow a jury to 15 long years
8 ago.

9 Thank you, Your Honor.

10 THE COURT: Thank you.

11 Is there anything else that the respondent would
12 like to say?

13 MR. RICHARDSON: Your Honor, respondent thanks this
14 Court for the opportunity to be heard during this proceeding
15 and during this hearing and during this morning's session, and
16 while I disagree with many of the characterizations Mr. Rudin
17 has just described the District Attorney's Office in, I don't
18 think at this juncture Mr. Rudin and I neither want to or need
19 to engage in a back and forth record making. I think that the
20 import of this occasion speaks for itself and it is enough to
21 let the record stand as it is.

22 The District Attorney has responded in this matter,
23 has identified information, has provided that information to
24 the defense and to the Court that acted upon that information
25 in the manner that we believe is both lawful and just in light

1 of the information itself and the status of the defendant in
2 this case.

3 While we continue to deny wrongdoing by our staff
4 members, our ADAs individually, our office as an entity, we do
5 acknowledge that the information that Detective Gerecitano
6 purports to have should have been revealed to the defendant at
7 the time of his trial, and for that reason we concede the
8 conviction without any prodding from the defense or any
9 requests from the Court. This Office sought to do that in the
10 interest of justice because, as Your Honor described it in the
11 very first day of this hearing, it is our mission, it is our
12 obligation as Assistant District Attorneys and as a District
13 Attorney's Office, to seek justice and fairness hand in hand.

14 We have never been an agency that has sought a
15 conviction by any means possible. We did not do so in this
16 case. There was information that should have been disclosed
17 that was not disclosed. Based upon that, we conceded the
18 conviction, and based upon the passage of time and the
19 opportunity to reevaluate Mr. Santos given to us by his own
20 testimony here in this courtroom, we made a decision, coupled
21 with other information, that we cannot retry this defendant
22 and therefore, in the interests of justice and fairness, we
23 concede this hearing, we concede to the defendants's relief
24 because it would be unfair otherwise to put this defendant
25 through this hearing and to potentially put him through

1 another retrial or through a retrial that we do not foresee
2 being able to maintain.

3 Your Honor, I, again, thank you, for the opportunity
4 for allowing me, this office as respondent, to come into this
5 courtroom and to acknowledge what has happened in the past,
6 and to take corrective steps to make sure that any wrongs that
7 were committed were righted here today.

8 THE COURT: Since this is the petition of
9 Mr. Collins, I don't know, Mr. Rudin, if there's anything else
10 that you wish to add, and certainly, if Mr. Collins would like
11 to be heard, I would give him that opportunity as well.

12 THE DEFENDANT: Judge Irizarry, first I would like
13 to thank you and your staff for taking the time to carefully
14 evaluate my petition, and finally, give me the day in court
15 that I have been denied for the last 15 years of my life. The
16 suffering my family and I have suffered at the hands of the
17 District Attorney's Office is simply unthinkable. The last
18 16 years of my life have been spent in prison for a crime I
19 did not commit. My children lost their father for 16 years.
20 My mother lost her son. We took 11 years for me working from
21 my prison cell to accumulate the evidence I needed to
22 initially challenge my conviction only to be met with now from
23 the District Attorney's Office that nothing had been done
24 wrong, and despite their claims at this point, I believe you
25 all know exactly why they consented to granting the relief in

1 would be acceptable to the respondent to resolve this matter,
2 and that is why we are agreeing to this resolution without
3 asking the Court to continue the evidentiary hearing, since I
4 have great doubt that the Court would even have the authority
5 to continue the hearing now that the respondent has agreed to
6 all the relief that we are seeking.

7 The District Attorney has consented, as I just said,
8 to all the relief that Jabbar Collins could possibly have
9 achieved at the end of this proceeding: His false murder
10 conviction is being vacated. This case is being dismissed for
11 good. He will be soon free. This is an astounding outcome
12 for a man who spent more than ten years with no legal
13 assistance reinvestigating his case from his prison cell. It
14 is an astounding outcome considering Jabbar Collins' claims
15 when first presented in Brooklyn four years ago were ridiculed
16 by the District Attorney and dismissed by a state judge and
17 the state appellate division wouldn't even hear an appeal.
18 The District Attorney concedes that critical recantation
19 evidence was unlawfully withheld. This is evidence, by the
20 way, that, according to the detective -- former
21 Detective Gerecitano was elicited at the District Attorney's
22 Office in the presence of, at least, one and possibly more
23 than one assistant district attorneys, although in the
24 statement that he made that was conveyed by Mr. Richardson he
25 claimed that he did not remember who that ADA or ADAs were and

1 that, of course, that was something that we would have
2 explored at the hearing.

3 Regrettably, the District Attorney's Office
4 continues to deny the remaining allegations in our petition.
5 These allegations are so well documented that this Court
6 granted an extraordinary hearing, even after the District
7 Attorney conceded there should be a new trial, into whether
8 retrial should be barred for pervasive and egregious
9 prosecutorial misconduct. Such a hearing is incredibly rare.
10 There may never have been another one in this courthouse.
11 This decision by this Court resoundingly contradicts the
12 District Attorney's self-serving statement this morning
13 denying the evidence that is in the court record for all to
14 see.

15 Federal courts are often overwhelmed with complex
16 criminal and civil case loads, and habeas corpus petitions by
17 state prisoners often are given short shrift but not in this
18 courtroom. This Court's mastery of the complexity of this
19 case, its willingness to make it a priority despite its other,
20 pressing burdens, today results in correcting a terrible
21 injustice: The wrongful conviction, through perversion of
22 legal process, of a brilliant, kind, and considerate young
23 man. I believe Jabbar Collins is innocent of the terrible
24 crimes of which he was accused and convicted 15 years ago, but
25 what I think as his lawyer doesn't matter. What matters is

1 my case. So I just want to thank the Court for its time, for
2 finally giving me a day in court, and for finally bringing the
3 suffering of my family to an end.

4 Thank you.

5 THE COURT: Thank you, all.

6 Let me just start off by saying that in terms of the
7 result that has been achieved here, either short of continuing
8 and concluding the hearing, that I certainly was prepared to
9 hold in this matter because I believe the only just and fair
10 result under all of the circumstances and to the extent that
11 the parties have been able to reach that resolution in the
12 manner in which they have, saving the expenditure of the
13 additional resources of the justice system, and I want to use
14 that in the expansive term because the District Attorney's
15 Office handles hundreds and hundreds of cases everyday and
16 Mr. Rudin has devoted his time pro bono, and we have a lot of
17 interns that are here today, and for all of the intents that
18 are here, it is good for them to see how important it is once
19 they become lawyers to devote some of their time to pro bono
20 work because it certainly was an important task to do, and
21 while Mr. Collins certainly gave himself a very good education
22 in the 16 years that he was incarcerated, there really can be
23 no substitute for the formal preparation and experience that
24 Mr. Rudin and his staff brought to bear on this case.

25 I am, however, disappointed in many ways that we did

1 not follow through with the hearing despite the amount of work
2 that it would have been, despite the other pressures that the
3 Court has with respect to other cases. It's the
4 responsibility that I have accepted to take on and I don't
5 shirk from that responsibility. The reason why I'm
6 disappointed is because I believe that the transparency of the
7 justice system is important.

8 It's important in order to instill public faith and
9 confidence in the justice system. It is only by having trials
10 and by having hearings that the public has an opportunity to
11 see and the public also by way of the media is given the
12 opportunity to come to the courtroom and report what happens
13 in the courtroom, to see how cases are investigated, to see
14 how they are tried, to see how the jury responds, to see how a
15 judge conducts him or herself in the proceeding, to see how
16 the attorneys and the parties conduct themselves, and this is
17 true for civil matters as well as criminal matters. It is
18 important. It is disappointing that in the face of so much
19 documentary evidence that has been adduced here, primarily
20 through the efforts of Mr. Collins, his unwavering efforts to
21 simply get what he and his defense attorney were entitled to
22 in the very beginning during the trying of this case back
23 16 years ago, and indeed, it was still through those efforts
24 under the Freedom of Information Act and various other
25 mechanisms, that during the course of the pendency of this

1 petition that additional evidence was uncovered, specifically
2 the actual documentation of material witness order for
3 Mr. Santos that had also not been turned over to the defense.

4 Mr. Santos came here and testified before the Court
5 and yet, additional information came to light that had not
6 been turned over to the defense and that was, as he said it,
7 he was strung out. He was using drugs 24/7, and in all
8 likelihood, was high the day he made the observations that
9 ultimately assisted in providing the evidence against
10 Mr. Collins that led to his arrest.

11 In fact, what's pretty dramatic about what he said
12 about that is that he said he was using just about every kind
13 of drug that there was except for heroin because he had
14 stopped using that some years before, but he was using just
15 about every other kind of drug that you can imagine, and what
16 he said was he was picked up off the street, in all likelihood
17 high, and the D.A.'s Office proceeded to question him. No
18 indication as to whether or not he might have been going
19 through withdrawal. No indication whether he was given medical
20 attention. Nothing.

21 And what he testified to was that he was
22 threatened, he was threatened with jail, he was threatened
23 with physical abuse, and frankly, he was cross examined by
24 respondent, and I found his testimony to be quite credible.
25 Nowhere in the record does there appear to be any proceeding

1 where he was brought before a judge on the material witness
2 order that was issued by Justice Egitto. He was simply taken
3 from the interrogation room and put in jail. So the
4 prosecutors made good their threat of putting him in jail if
5 he didn't testify. He was held there for a week. The proper
6 process for holding a material witness is to bring that
7 witness before a judge so that the judge can advise that
8 person of his or her rights, assign counsel to advise that
9 person of their consequences, and then if the person still
10 refuses to comply, then civil commitment is in order. I,
11 myself, as a state court judge had the opportunity to handle
12 such proceedings, and they are important, and sometimes the
13 witness agrees once they come before the judge to testify and
14 sometimes they don't for any number of reasons.

15 But again, the fact that there are no minutes of any
16 such proceeding, none of this was ever disclosed, and there's
17 certainly no disagreement about that. None of this was ever
18 disclosed to the defense and in fact, the prosecutor who got
19 the material witness order, Mr. Vecchione, did the summation
20 and made representations that Mr. Santos was testifying of his
21 own free will. As he said here in open court under oath, he
22 didn't want to testify then, he didn't want to be here now.

23 After that all the other documents that support the
24 allegations that were raised by Mr. Collins, and then added to
25 that, the affidavits that were provided by Mr. Vecchione and

1 some of the other members of the D.A.'s staff professing that
2 they did nothing wrong, that they weren't aware of any
3 material witness orders, that they weren't aware of any
4 violation of probation order and so on, it is, indeed, beyond
5 disappointing. It is really sad that the D.A.'s Office
6 persists in standing firm and saying they did nothing wrong
7 here. It is, indeed, sad.

8 It is, indeed, sad that there is nothing in what has
9 been said in the statement of the D.A.'s Office that says we
10 see there were a number of things that were done here that
11 were, perhaps, done incorrectly, and we are going to take
12 steps to make sure that none of this ever happens again. We
13 are going to make sure to train our assistants to make sure
14 they understand that. Yes, there may be sometimes when you
15 will have a reluctant witness. In fact, it happens quite
16 often that you have a reluctant witness, and you take
17 witnesses as they come. You can't help that. And sometimes
18 they have long criminal records and sometimes they are drug
19 addicts and sometimes they are just not nice people, but they
20 have that valuable information that you need and so, sometimes
21 material witnesses are necessary, but there is a procedure to
22 be followed. Those procedures are there to safeguard the
23 rights of the witness, as well as to provide the resources
24 that a prosecutor needs to do his or her job effectively.

25 While it can be said that justice is served today to

1 the extent that Mr. Collins will not have to continue to serve
2 a sentence that was obtained in violation of his
3 constitutional rights and I think that in all likelihood if
4 all of the witnesses -- if all of the evidence came out the
5 way that it was represented by the petitioner, in all
6 likelihood I don't think that the Court would have needed the
7 D.A.'s Office to review their evidence. It seems to me, given
8 all the challenges to the credibility of the main witnesses
9 and given the passage of time, that there could have been no
10 reasonable juror who would have been able to find Mr. Collins
11 guilty beyond a reasonable doubt.

12 The issue before the Court is not whether or not
13 Mr. Collins is guilty. That's not the issue before the Court.
14 The only issue before the Court is whether or not his
15 conviction was obtained in an unconstitutional manner, and as
16 Mr. Rudin said, the whole problem here is that the initial
17 jury who had the case was not given the opportunity to, and
18 indeed, was not trusted to do its job as factfinder, and to
19 apply those facts to the laws the Court were given by
20 providing all of the information that was available and to
21 provide the defense with the information that it was
22 rightfully entitled to.

23 At the oral argument here, the first day of what was
24 to be the hearing, Respondent argued that the Office had
25 conducted a very thorough investigation of the allegations

1 made by Mr. Collins back when he had collaterally attacked his
2 conviction in state court, but the key thing to have done in
3 that investigation would have been to have brought in the
4 police officers who are involved and perhaps back then they
5 would have "discovered" that Mr. Oliva had recanted the
6 testimony, and frankly, defies credulity to believe that
7 Mr. Vecchione who in an affidavit said that there was nothing
8 that happened in the trial that he did not know, no decision
9 that was not made that did not go through him. It defies
10 credulity to believe that he did not know about the recanted
11 witness; and as a more senior prosecutor he, certainly, should
12 have been aware of all of the obligations to disclose a
13 witness' addiction, material witness order, and to follow all
14 of the appropriate procedures.

15 At the end, because I agree with Mr. Rudin and with,
16 ultimately, the Respondent I am sure joins the Court based
17 upon the agreement that the parties have reached, it is
18 without jurisdiction to continue with the hearing because the
19 petitioner has obtained the relief that he sought and indeed,
20 relief that was sought as pursuant to the amended petition is
21 the most comprehensive relief that could ever be granted in
22 any petition for a writ of habeas corpus, which is an
23 unconditional release and prohibition against being retried.

24 MR. RICHARDSON: Apologize for interrupting the
25 Court, but you have just said several things that --

1 THE COURT: I really don't want to hear any more
2 denials.

3 MR. RICHARDSON: Your Honor, I was not offering
4 denials. If I may?

5 THE COURT: Yes.

6 MR. RICHARDSON: The one thing you did not hear from
7 the prepared statement that I read to this Court was a single
8 excuse. I did not make any excuses then and I do not make
9 excuses now. My Office's position then and now was that we
10 believe in this defendant's guilt. However, Your Honor is
11 correct in that through the passage of time, through a
12 reevaluation, through the right analysis of evidence of
13 witnesses that were both before the trial court and were
14 either before this hearing court or were to come before this
15 hearing court, we have reevaluated that position with you, but
16 one thing that Your Honor has said is that the record of this
17 court -- of the defendant's trial doesn't reveal that certain
18 things were revealed, whether or not we revealed that there
19 was MWO, material witness order -- excuse me, whether or not
20 we revealed anything about Mr. Oliva or Mr. Diaz, about what
21 you, the Court, knows. And what the record should reflect is
22 that we are both, Mr. Rudin and myself, and this Court, are
23 dealing with a transcript that is incomplete and there are
24 approximately 50 pages of transcripts that are missing, and
25 while Your Honor describes a diligent search to investigate

1 the defendant's claims, one of those diligent searches was to
2 attempt to find those missing pages of the transcript, and
3 that was done.

4 (Continued on next page)

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1 MR. RICHARDSON: One court reporter is dead. The
2 other court reporter is mentally incapacitated to the point
3 that she cannot be interviewed, and both of their notes are
4 missing. So, as the respondent, as the District Attorney's
5 office, I am left with a record that is incomplete. A record
6 that is incomplete, the afternoon, after opening statements
7 were given, and then a record that's incomplete the morning
8 before Edwin Oliva testified.

9 I do not know what was revealed to the Court that
10 morning. I do not know if anyone revealed to the Court that
11 morning that Oliva had potentially recanted and then come
12 back. I do not know if anyone said that Angel Santos had a
13 drug habit. I do not know what is in that missing portion of
14 the minutes. It is my burden to know, it is my responsibility
15 to explain what's there, and I cannot, because it's missing.

16 So, I don't make any excuses for the position that
17 the respondent finds themselves in today, and I do not make
18 any excuses for conduct that occurred fifteen years ago in the
19 petitioner's trial. But what I do know is this: The
20 material-witness order for Angel Santos was done in front of a
21 judge. The order that's before this Court is signed by Judge
22 Egitto. We know that the prosecutor's office, on their own,
23 cannot commit someone to civil jail custody. I do not have
24 that authority. No member of my office has that authority.

25 THE COURT: But it's one thing to shove an order

1 under a judge's nose and ask him to just sign it, and it's
2 another thing to have a whole proceeding before the judge
3 where the material witness is brought and the judge explains
4 what a material-witness order is, provides counsel to the
5 potential witness, okay, especially in a situation with
6 Mr. Santos, where he was a drug user, where he might have been
7 subjecting himself to possible prosecution.

8 He was scared stiff about the prospect. He was
9 being told that he might be prosecuted for perjury, and he was
10 even concerned about that when he came before this Court, and
11 that was the reason why this Court assigned him counsel at no
12 cost, to advise him of that.

13 MR. RICHARDSON: Your Honor --

14 THE COURT: And the bottom line is that no
15 self-respecting defense attorney -- and Mr. Harrison was an
16 experienced defense attorney. He handled many, many cases --
17 no self-respecting defense attorney, having in-hand knowledge
18 that a witness recanted testimony, would forego
19 cross-examination of that witness based on that. And while
20 there may be fifty pages of transcript missing, the bottom
21 line was that there was no discussion whatsoever about the
22 material-witness order anywhere. There was no questioning by
23 Mr. Harrison about any material-witness order. And
24 Mr. Vecchione's summation was that the witnesses came there
25 voluntarily. And there is more that's in the record that has

1 been discussed and more that has not been discussed. And, no,
2 I didn't hear excuses, but I also didn't hear at all any kind
3 of acknowledgment that things were done that should not have
4 been done other than with respect to the recanting.

5 MR. RICHARDSON: Your Honor mentions with
6 specificity witness Santos, who testified in this court, and
7 as your Honor was a Supreme Court judge in Kings County, Judge
8 Egitto was a Supreme Court judge in Kings County for many
9 years, as well, and I have never met a Supreme Court judge in
10 Kings County or anywhere else who would accept a
11 material-witness order as something that would be shoved under
12 their nose without reading, inspecting and interviewing the
13 witness who is the subject of that order.

14 It has been my experience in Kings County that every
15 judge does that, that no judge touches those orders lightly,
16 because at that moment, a judge is faced with a decision
17 whether or not to imprison a person who, other than refusing
18 to testify --

19 THE COURT: You know what? I'm just going to stop
20 it here at this point in time, because we've not been able to
21 pursue any kind of hearing.

22 We've not been able to bring Justice Egitto, now
23 retired, here to discuss what was or was not done. And I'm
24 not here to cast aspersions on any of my colleagues, who I
25 still respect and admire, but human beings are human beings,

1 and just as there are prosecutors who don't do the right thing
2 and defense lawyers who don't necessarily do the right thing
3 and defense lawyers who maybe are not so careful about what
4 they do, there are also, in the same vein, police officers and
5 judges who don't do necessarily what they should do and follow
6 procedures that should be followed.

7 But that's not necessarily what is here before me,
8 and I'm not going to get sucked into some discussion about
9 what the caliber of the judiciary is in Kings County, because
10 that's really not what's at issue here --

11 MR. RICHARDSON: I agree.

12 THE COURT: -- because what is at issue, very often,
13 a judge can't do more if the judge is not provided with the
14 appropriate information. The judge relies on the
15 representations that are made by the parties and the facts
16 that are presented to the judge. We're not the investigators.
17 We're not the defense attorneys, and our job is to make sure
18 that the constitutional rights of all sides are protected:
19 Prosecution, who represents the victims in the case, and the
20 defense and the defendants, and ultimately to make sure that
21 the process, while maybe not perfect, is a fair one.

22 MR. RICHARDSON: I agree with your Honor 100
23 percent, and I have no doubt that that's what Judge Egitto did
24 in handling the MWO, the material-witness order that was
25 presented to him regarding Angel Santos.

1 Angel Santos, by the way, who testified here that he
2 may have been high on drugs during the observation and he may
3 have been high on drugs many times before and during that --
4 and I agree with your Honor, we take our witnesses as we find
5 them, and we find witnesses in the highest levels and the
6 lowest levels, and we have to use them, because they are the
7 witnesses to crimes -- but the fact that he was addicted to
8 drugs or might have been addicted to drugs at the time does
9 not make him any less valuable as a witness, as you have
10 described.

11 THE COURT: I'm not talking about that. I'm not
12 talking about that.

13 But the bottom line is, no, the bottom line is that
14 that is a fact that needed to be turned over to the defense,
15 so that the defense can then challenge him on the stand in
16 front of the jury and let the jury decide, and let the jury
17 decide with all of the facts that it should have. And that
18 didn't happen here, and certainly, by the time he testified,
19 he had had a chance to dry out, because he said he wasn't on
20 drugs when he testified.

21 But that's not the issue. The issue is not whether
22 or not he should have used as a witness or not. That's the
23 choice of the judge, and it's not the choice of the defense.
24 That's the government's choice. That's the People's choice.

25 MR. RICHARDSON: Your Honor, never has it been my

1 understanding of the Brady rule that I would be required to
2 turn over a witness's status as a person who uses drugs or
3 uses alcohol, unless that drug use or alcohol use was in some
4 way relative to what that witness witnessed.

5 THE COURT: Precisely. You know what,
6 Mr. Richardson? I'm going to stop you here, okay, because the
7 bottom line was, he said right here that he was probably high,
8 because he was always high, at the time that he made the 911
9 call, which also wasn't turned over -- the tape of which also
10 wasn't turned over to the defense, and he was high when he
11 when he went in for his first interview. The fact is that
12 whether or not a person is intoxicated or under the influence
13 of drugs at the time that he or she makes the observations
14 that are at issue, okay, is relevant to credibility.

15 The young man in the wheelchair, we have a spot in
16 the front there where you can fit comfortably, so you can be
17 out of the way of the aisle.

18 A VOICE: Thank you.

19 THE COURT: You are welcome.

20 But I don't want to belabor this and go into a
21 back-and-forth about this.

22 The bottom line is that it was Giglio material that
23 affected -- potentially could affect the impeachment or the
24 credibility of the witness, and that wasn't turned over, among
25 the other things that happened here. And the bottom line is

1 that while, yes, respondent is not making any outward excuses,
2 but by standing by everything that you did, and not
3 acknowledging that there were documents that should have been
4 turned over that weren't turned over, acknowledging that there
5 was information -- not acknowledging that there was
6 information that should have been given that wasn't given, you
7 stand by all of that, I think that that's shameful. I think
8 that that's shameful, and what I hope will come out of this is
9 that there will be some more significant training in this area
10 with respect to the trial assistants, so that something like
11 this just doesn't happen again.

12 MR. RICHARDSON: Your Honor, I can say that while I
13 am not in any way attempting to excuse or justify things that
14 I know that my office may have done incorrectly, I am not
15 admitting things that I do not know that we did.

16 And your Honor has asked something very important,
17 which is whether or not there is training in my office for the
18 trial assistants. Well, there is training for our trial
19 assistants, and I think it's some of the best training that is
20 offered in this state, both in the office and through the
21 State Prosecutors Association, and our assistants attend those
22 trainings on a regular basis.

23 As your Honor knows, this type of appeal that's
24 before your Honor is an extremely rare occurrence. It's rare
25 in this federal court, and it's rare in state court, because

1 it's not the practice of the District Attorney's office to
2 withhold information from any defendant, not just
3 Jabbar Collins, not just murder defendants, but offenses for
4 drugs or rapes or any other type of case we have. We believe
5 in full disclosure. We engage in full disclosure.

6 Is it clear on this record that there were problems
7 in the Jabbar Collins prosecution? Your Honor, I can only say
8 in one word, yes, it is clear. Has the office taken steps
9 since then to address concerns that were raised by what our
10 conduct might have been in his case? Absolutely, your Honor.
11 It is the office's policy now, as it was then, to completely
12 disclose such information in 911 tapes. Any type of Brady
13 material, we are aware that that's our obligation to turn it
14 over, and we do turn it over, just as we did in this hearing.
15 When we became aware of something, we turned it over.

16 Gerecitano's information, your Honor, I cannot prove
17 that that happened, but I can't disprove it happened, but
18 that's not my measuring rod, my duty is, when I learn of this
19 information, to turn it over. I can then investigate it all
20 the live-long day, which I did, and I still cannot prove that
21 it happened. But it's information that, if Gerecitano said it
22 and knew it, it should have been provided to Mr. Harrison for
23 Mr. Collins at his trial, and it wasn't. And because we
24 acknowledge that that was an error, we conceded this
25 conviction, and that's not an easy thing for a state

1 prosecution to do -- for a state prosecutor to do, and it's
2 not an easy thing for me to do personally, but we have done
3 it, because it was the right thing to do.

4 Your Honor, without announcing to the Court all the
5 steps that my office has taken to insure that these things
6 don't happen, you can be certain that we have taken steps and
7 will continue to take steps to make sure that each and every
8 defendant tried in our county courts receives a fair trial,
9 with full knowledge of all the information possessed of the
10 People against him.

11 MR. RUDIN: Your Honor, may I make one comment?

12 THE COURT: Yes.

13 MR. RUDIN: The Gerecitano statement to
14 Mr. Richardson and Ms. Ferrel did not happen in a vacuum.

15 In our 440 motion that we filed in 2006, we included
16 a sworn affidavit by Edwin Oliva that disclosed that he had
17 made a full recantation, and then had been brow-beaten by
18 Mr. Vecchione, and he said to Mr. Vecchione and Mr. Posnor was
19 brow-beaten into testifying, his work release was rescinded,
20 and he was threatened, and that's why he testified the way he
21 did.

22 For four years, the District Attorney was on notice
23 of the sworn recantation of its principal witness, that he had
24 fully recanted and then been coerced into testifying. Only
25 because your Honor ordered an evidentiary hearing did we have

1 the ability to subpoena the retired detective Gerecitano, who
2 was the principal detective who handled Edwin Oliva initially,
3 and took his initial statement. It was because of that that
4 Detective Gerecitano was interviewed by Mr. Richardson in
5 preparation for the hearing, and made his disclosure at that
6 time, which obviously is a disclosure that he would have
7 repeated in court.

8 I'm not suggesting that Mr. Richardson would not
9 disclose it, anyway. It was only because of that sequence of
10 events that the information was finally acknowledged by the
11 District Attorney. And, as your Honor has pointed out, had
12 there been a proper investigation beginning in 2006, had there
13 not been more than a dozen sworn statements by Monique Ferrel
14 and Michael Vecchione, the Chief of the Rackets Bureau,
15 definitively denying that anyone in the District Attorney's
16 office had been present for any recantation, if not for those,
17 Mr. Collins would have been or should have been released four
18 years ago.

19 To say that a New York City -- to imply that a
20 New York City police detective may somehow be mistaken in
21 recalling years later that there was a recantation -- which,
22 by the way, happens to corroborate the witness's own
23 affidavit -- after the District Attorney's office admitted,
24 two weeks ago, as a matter of fact, that there was a
25 recantation and there was a Brady violation and that's why

1 they were consenting to vacate the conviction -- is
2 disappointing, to say the least, that that's the position that
3 they are taking.

4 THE COURT: That's exactly my point. I'm not going
5 to belabor this any further, because along the way, along the
6 way, there were many steps that could have been taken. And
7 that's absolutely right, Mr. Rudin. But for the fact that
8 this Court ordered a hearing, there would not have been such a
9 close examination, and but for the fact that the Court pressed
10 respondent to make sure that we had a complete record that
11 forced a more thorough search of the record here, that granted
12 petitioner leave to expand the record in this case, but for
13 all of those things, I'm not so sure that we would be here
14 reaching this decision necessarily, which is the right and
15 proper decision. And we talk about justice. It's very
16 difficult to talk about justice in the situation that we're
17 confronted with now, sixteen years later.

18 There is a man who is dead, whose family was
19 deprived of his presence and his support, a witness who was
20 injured. By the same token, there is Mr. Collins and his
21 family, who suffered what they suffered through.

22 As I said earlier, whether or not Mr. Collins is
23 guilty or not guilty is not really the issue here, because
24 what is the issue is whether or not he was deprived of his
25 constitutional rights during that trial, and it should have

1 been up to that trial jury to make the determination of the
2 facts based on everything that it should have considered, and
3 it was not given that opportunity. It was not given that
4 opportunity.

5 So, there are two tragedies here. There's the
6 tragedy of Rabbi Pollack and his family, and there's the
7 tragedy of the Collins family, and perhaps a third tragedy,
8 the tragedy of a justice system that, at least in this case,
9 was not transparent and did not follow the procedures and the
10 safeguards that have been developed, both through the
11 legislature and in case law, to insure that these kinds of
12 things don't happen.

13 And as I said, I can only hope that what the DA's
14 office has represented here today is in fact what it will do,
15 which is to emphasize to the prosecutors in that office the
16 importance of Brady. The habeas petition should not be taken
17 lightly. There isn't a single judge in this courthouse that
18 takes a habeas petition lightly. We get many of them. Why?
19 Because there's always that possibility that you might have
20 that one or two persons who are in fact innocent, or who may
21 have had an injustice done to them during the course of their
22 cases that deprived them of their constitutional rights, and
23 at the minimum, they deserve to have those rights vindicated,
24 because when we don't have the Constitution adhered to, when
25 we don't have the procedural safeguards that are in place and

1 that have been put in place by Congress and by the state
2 legislature, then we as a society are doomed to failure.

3 This is the Constitution that is emulated and copied
4 in countries around the world. There are countries around the
5 world who want to fashion themselves after us, and at the
6 foundation of their new systems is their constitution, very
7 much like ours. Great praise for such a young country as
8 ours. These can't be just meaningless words. This is a
9 living, breathing document that has to mean something. We, as
10 lawyers and as judges, take an oath to uphold the
11 Constitution. It is a sacred duty that we have.

12 I am glad that at least at this point in time, we
13 have reached, as I said before, the proper resolution in this
14 case.

15 The only thing that is left is to resolve a
16 practical issue that we also discussed yesterday during the
17 conference call. It was how to effectuate the release of
18 Mr. Collins, because he did have a violation of probation from
19 his youthful-offender adjudication imposed consecutively, in
20 which case that would still technically have a hold on him. I
21 did allow the parties to come in later this morning to give
22 respondent an opportunity to investigate, with Corrections and
23 any other appropriate agencies, how to effectuate that
24 release.

25 MR. RICHARDSON: Your Honor, Mr. Rudin and I both

1 made phone calls to the Greenhaven Correctional Facility, and
2 we are both armed with the same information, as Mr. Rudin will
3 be following up on the information, I would be glad to let Mr.
4 Rudin inform the Court what he was told by Greenhaven.

5 THE COURT: Yes.

6 MR. RUDIN: We need an order from the Court granting
7 relief that we need taken in a certified form. Once that
8 order is received at Greenhaven, they will conduct the process
9 of crediting Mr. Collins with time served, and then he'll be
10 released.

11 He could be released either from New York or from
12 Greenhaven, I'm told. I think this process will take a couple
13 of days. I think Mr. Collins will just as soon be released
14 from Greenhaven, and I would ask your Honor to direct the
15 authorities, I guess it's the marshals, more than the
16 marshals, I understand it's the state correctional
17 authorities, to try to move Mr. Collins back to Greenhaven as
18 expeditiously as possible, so he's not somehow caught in
19 transit in some interim facility. He should be moved as soon
20 as possible back to Greenhaven, and Greenhaven will process
21 this, and he'll be released from Greenhaven.

22 Mr. Collins's youthful-offender adjudication was
23 converted to a conviction, because of his conviction in this
24 case. He does need to be credited with time served on that
25 sentence. At an appropriate time, we will move to vacate that

1 conviction, as well. That matter is not before your Honor.

2 THE COURT: That would have to be done before an
3 appropriate state court judge or justice.

4 MR. RUDIN: Your Honor, just one other thing to
5 complete the record. There are no fifty missing pages.
6 There's a fifty-page gap in pagination due to the convenience
7 of the court reporters. I think we all know it's common, at
8 least in state court it's common, that sometimes a gap will be
9 left in the pagination while one reporter finishes
10 transcribing the minutes and another reporter picks up the
11 next day. There's no evidence of any missing proceedings.
12 It's a seamless transition, so there are no missing pages.

13 MR. RICHARDSON: That is incorrect, Mr. Rudin,
14 particularly with the second segment of the missing
15 transcript, that begins with no introduction and just the
16 witness on the stand. So, it's not a seamless transition.

17 That might just be the solution, of perhaps a page
18 or two, what it appears to be. And this was verified by the
19 court reporter that it was daily copy, and in daily copy, as
20 the Court is well aware, the reporters concentrate on
21 delivering the testimonial portion of the transcript, and that
22 contains the witness testimony, and would leave out the
23 sidebars or the bench conferences that might have been held.

24 And it is the opinion of the court reporters -- the
25 head of the court reporters that that is what happened on the

1 March 6 missing date and on the March 7 missing date, but
2 because no certified transcript was ever ordered, and now with
3 the incapacitation of one court reporter and the passing of
4 the other, it is impossible to get a certified transcript at
5 this time.

6 MR. RUDIN: Your Honor, Ms. Ferrel represented to
7 this Court, when your Honor was asking this very issue, that
8 this was a complete transcript, and it was only a question of
9 pagination.

10 And I would also point out that there was a direct
11 appeal in this case, and this is the record that went up on
12 appeal. So, for the District Attorney now to suggest that
13 it's failure to disclose certain information as a result of a
14 missing transcript, that it may have been disclosed in the
15 missing transcript, is almost somewhat lamentable.

16 THE COURT: I'm not buying that argument.

17 MR. RICHARDSON: I don't believe I made that
18 argument.

19 THE COURT: To the extent that it can be inferred
20 that there perhaps might have been disclosures made in those
21 missing fifty pages, I'm not buying that.

22 MR. RICHARDSON: Your Honor, I did not --

23 THE COURT: I'll done with this back-and-forth. At
24 the end of the day, whatever we say here doesn't impact the
25 end result. I can only, as I said, only hope that I do not

1 see another case such as this one before me on another writ of
2 habeas corpus, and that what's happened here will not be
3 repeated again.

4 What I will do is this. In the first instance, the
5 Court grants the petition for writ of habeas corpus in its
6 entirety. Mr. Collins is unconditionally released. The
7 respondent District Attorney of Kings County is prohibited
8 forever more from prosecuting Mr. Collins for the charges that
9 were contained in Indictment Number 2884 of 1984 --

10 MR. RICHARDSON: 1994, your Honor.

11 THE COURT: -- 1994. I'm so sorry. Thank you.
12 That's Indictment Number 2884 of 1994. Those are charges
13 stemming from the robbery and murder of Rabbi Pollack, and
14 the -- I believe it was attempted murder of Mr. Avery. That
15 indictment is to be dismissed with prejudice.

16 The minutes of these proceedings will be the order
17 of the Court. However, the Court will issue a separate
18 judgment, which will be what will be forwarded to Greenhaven.
19 It will just take us maybe about an hour to put that together,
20 and it will just be a modified version of incorporating what
21 the parties agreed to and submitted in Mr. Rudin's June 7
22 letter.

23 And then you can get -- we'll give you a call,
24 Mr. Rudin. I guess you're going to follow up with Greenhaven,
25 so that you can get a certification of that, and however many

1 copies you need for Corrections.

2 MR. RUDIN: Thank you, your Honor.

3 THE COURT: Thank you all very much.

4 MR. COLLINS: Thank you, your Honor.

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